

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

JOHN CARR,

Plaintiff

v.

SIEMENS DEMATIC CORP. and

AMEC CONSTRUCTION
MANAGEMENT, INC.,

Defendants

CIVIL ACTION NO. 05-10445MLW

ANSWER OF SIEMENS DEMATIC CORPORATION

1. The Defendant is without knowledge or information sufficient to either admit or deny the truth of the allegations contained in paragraph 1 of the Plaintiff's Complaint.
2. The Defendant admits the allegations contained in Paragraph 2 of the Plaintiff's Complaint.
3. This allegation calls for a legal conclusion to which no answer is required. To the extent an answer is required, defendant denies the allegations contained in Paragraph 3a through 3d.
4. The Defendant is without knowledge or information sufficient to either admit or deny the truth of the allegations contained in paragraph 4 of the Plaintiff's Complaint.
5. This allegation calls for a legal conclusion to which no answer is required. To the extent an answer is required, defendant denies the allegations contained in Paragraph 5a through 5d.
6. The Defendant is without knowledge or information sufficient to either admit or deny the truth of the allegations contained in Paragraph 6 of the Plaintiff's Complaint.

COUNT I

7. The Defendant reasserts and incorporates by reference herein each of its responses set forth in paragraphs 1 through 7 of the Plaintiff's Complaint.
8. The Defendant admits that equipment manufactured by Siemens is located at Logan Airport but is without knowledge or information sufficient to either admit or deny the truth of the remaining allegations contained in Paragraph 8 of the Plaintiff's Complaint.

9. The Defendant denies the allegations contained in Paragraph 9 of the Plaintiff's Complaint.
10. The Defendant denies the allegations contained in Paragraph 10 of the Plaintiff's Complaint.
11. The Defendant denies the allegations contained in Paragraph 11 of the Plaintiff's Complaint.
12. The Defendant denies the allegations contained in Paragraph 12 of the Plaintiff's Complaint.

WHEREFORE, the Defendant requests that this Count I be dismissed and Defendant receive an award of attorney's fees, costs and any other relief deemed just and appropriate.

COUNT II

13. The Defendant reasserts and incorporates by reference herein each of its responses set forth in paragraphs 1 through 12 of the Plaintiff's Complaint.
14. The Defendant denies the allegations contained in Paragraph 14 of the Plaintiff's Complaint.
15. The Defendant denies the allegations contained in Paragraph 15 of the Plaintiff's Complaint.
16. The Defendant denies the allegations contained in Paragraph 16 of the Plaintiff's Complaint.
17. The Defendant denies the allegations contained in Paragraph 17 of the Plaintiff's Complaint.
18. The Defendant denies the allegations contained in Paragraph 18 of the Plaintiff's Complaint.
19. The Defendant denies the allegations contained in Paragraph 19 of the Plaintiff's Complaint.

WHEREFORE, the Defendant requests that this Count II be dismissed and Defendant receive an award of attorney's fees, costs and any other relief deemed just and appropriate.

COUNT III

20. The Defendant reasserts and incorporates by reference herein each of its responses set forth in paragraphs 1 through 19 of the Plaintiff's Complaint.

21. The Defendant is without knowledge or information sufficient to either admit or deny the truth of the allegations contained in Paragraph 21 of the Plaintiff's Complaint.
22. The Defendant denies the allegations contained in Paragraph 22 of the Plaintiff's Complaint.
23. The Defendant denies the allegations contained in Paragraph 23 of the Plaintiff's Complaint.
24. The Defendant denies the allegations contained in Paragraph 24 of the Plaintiff's Complaint.
25. The Defendant denies the allegations contained in Paragraph 25 of the Plaintiff's Complaint.
26. The Defendant denies the allegations contained in Paragraph 26 of the Plaintiff's Complaint.
27. The Defendant denies the allegations contained in Paragraph 27 of the Plaintiff's Complaint.

WHEREFORE, the Defendant requests that this Count III be dismissed and Defendant receive an award of attorney's fees, costs and any other relief deemed just and appropriate.

COUNT IV

This Count is not directed at the Defendant and no response is required, however to the extent that such a response is required, the Defendant denies the allegations contained.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

By way of affirmative defense, the plaintiff has failed to state a cause of action in its complaint for which relief can be granted. Federal Rules of Civil Procedure 12 (b)(6).

SECOND AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that the negligence of the plaintiff was greater than the alleged negligence of the defendant and that such negligence of the plaintiff contributed to its alleged injury and, therefore, the plaintiff is barred from recovery.

THIRD AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that the plaintiff was guilty of contributory negligence and that the damages, if any, recovered by the plaintiff from the defendant should be reduced in proportion to the said negligence of the plaintiff.

FOURTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that the plaintiff, by its conduct and actions and/or the conduct and actions of its agents and servants, is estopped to recover any judgment against the defendant.

FIFTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that the plaintiff has, by its actions and/or the conduct and actions of its agents and servants, waived any and all rights it may have had against the defendant, and, therefore, the plaintiff cannot recover in this action.

SIXTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that if the plaintiff suffered injuries or damages, as alleged, such injuries or damages were caused by someone for whose conduct the defendant was not and is not legally responsible.

SEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's alleged injuries or damages were caused in whole or in part by the negligence of the plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that no act or omission by him was a proximate cause of damages, if any, allegedly sustained by the plaintiff's decedent or plaintiff.

NINTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff is not entitled to recover because the plaintiff failed to mitigate damages.

TENTH AFFIRMATIVE DEFENSE

And further answering, the defendant Siemens Dematic Corp. says that no notice of any alleged breach of warranty was given to the defendant as required by law and the defendant was thereby prejudiced.

ELEVENTH AFFIRMATIVE DEFENSE

And further answering, the defendant Siemens Dematic Corp., states that it has performed and fulfilled all promises and obligations arising under all applicable warranties and, therefore, the plaintiff is barred from recovery.

TWELFTH AFFIRMATIVE DEFENSE

And further answering, the defendant, Siemens Dematic Corp., says that it denies liability for any implied warranty of merchantability, since any product sold by the defendant was fit for the ordinary purpose for which said product was used.

THIRTEENTH AFFIRMATIVE DEFENSE

And further answering, the defendant, Siemens Dematic Corp., says that any product it sold was fit for its particular purpose and therefore the plaintiff is barred from recovery.

FOURTEENTH AFFIRMATIVE DEFENSE

And further answering, the defendant, Siemens Dematic Corp. denies that it breached any express warranties of any kind to any person and/or entity through whom the plaintiff is entitled to claim.

Respectfully submitted,
Siemens Dematic Corp.,

By Its Attorneys,

/s/ Carey Bertrand
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